

Commonwealth Court of Pennsylvania
Reminiscences of The Honorable Johnny J. Butler

September 15, 2011

Harrisburg, Pennsylvania

MR. SCHUCKERS: This is Dan Schuckers. Today is September 15, 2011, and I'm in the chambers of Judge Johnny J. Butler, who is a judge of the Commonwealth Court here in Harrisburg. And I'm here to interview him and have him give us his reminiscences of the Commonwealth Court and also talk about his personal background and his legal background and his reflections on the Commonwealth Court.

Thanks for doing this, Judge Butler. Could you give us a little bit of background as to where you were born, where you were raised, how you came to the law?

JUDGE BUTLER: Well, I always tell the story that I was born and raised in Macon, Georgia, prior to the passage of the 1964 Civil Rights Act. And I will tell people that because that was a pivotal time line. I grew up in the completely segregated South. Everything was black and white, segregated. There was discrimination, the whole nine yards. That was the society I grew up in. I graduated from high school in 1963. And as a matter of fact, I left home the weekend of the famed Martin Luther King March on Washington "I Have a Dream" Speech. That's when I left home, went to college. And so the whole Civil Rights thing is a pivotal time slot for me.

MR. SCHUCKERS: Right. Now, as I recall, Macon, Georgia, is a fairly rural area.

JUDGE BUTLER: Well, it's in the heart of Georgia. It's the fifth largest city in the state. So it had a combination – the city itself was urban, but everything around it for 60 miles was rural. And we were about 90 miles from Atlanta. So the first big city you got to once you left Macon was Atlanta 90 miles away or Augusta going east or Columbus, you know, going west or going further south, you had Savannah. So we were in the heart of Georgia.

MR. SCHUCKERS: Reflecting on that era before the speech, Martin Luther King speech, do you – what are your reflections on Jim Crow? Did you go to a – obviously a segregated high school, the whole school system --

JUDGE BUTLER: It was a way of life. Everything was segregated according to race. Everything. And there was discrimination. Jim Crow was everywhere.

Again, going back to the weekend of the March on Washington in 1963, I left home that morning, went to the train station, sat in the segregated section of the train station in Macon; when the train came in, got on in the segregated coach, the Jim Crow coach, and rode that from Macon to Atlanta; went to Atlanta, got in the segregated – the colored waiting room, waited for the train in Atlanta; took the – when the train came in, got on the Jim Crow coach to the train and took it to Washington, D.C. And in Washington, D.C., ironically that's when people could move and sit anywhere. Obviously I got off the train in Washington to go to college.

MR. SCHUCKERS: Had you ever been north of Georgia or north of the South before you went to Washington, D.C., in August of 1963?

JUDGE BUTLER: I had come up once in 1958. I had come up with my grandmother to visit her sister in Philadelphia. So we were here; we were in Philadelphia for a couple weeks. But I was a youngster. I was probably 12 years old or something. So my perspective on what was going on was quite different – I'll tell you this, now that you have mentioned that. One of the things that I do remember about that trip within the context of the Jim Crow dynamics, two or three things, as a matter of fact, one of which is there was a street cleaning group, neighborhood street cleaning stuff, and the prize for working on the street cleaning project was to go to the Philadelphia Phillies baseball game.

MR. SCHUCKERS: Okay.

JUDGE BUTLER: Now, I didn't go, but I had never thought of going to a major league baseball game because you didn't have major league baseball in the South. They had minor league teams, and their minor league teams were segregated Jim Crow. The first time I – when I was in high school, Pete Rose played for the Savannah, Georgia Redlegs of Cincinnati, the AA affiliates of the Cincinnati Reds. And my hometown, Macon, had AA affiliates of the Dodgers. So they were the Macon Dodgers and the Savannah Redlegs. So here there was an opportunity to go to a major league baseball game; I remember that, number one.

Number two, what's most significant in the Jim Crow context was that while there, I visited one of my grandmother's nieces and stayed overnight at her house and woke up on a Saturday morning and noticed that there were white people on both sides in the houses, both sides of my aunt's. And I was shocked that white folks lived on the same block with black folks. So those two things stand out.

MR. SCHUCKERS: Right. Yes. And I suppose in terms of restaurants in Macon or theaters, those were segregated?

JUDGE BUTLER: Yes. Everything was segregated. You ate at the – the lunch counters were colored and white. Everything was colored and white.

MR. SCHUCKERS: Right.

JUDGE BUTLER: There were no restaurants to speak of that black folks could go to. And I can remember years later going to Nashville, Tennessee, I guess it was, for a conference after I'm a lawyer. And the hotel I stayed in, right across the street from the hotel was a Shoney's Big Boy. That's a McDonald's type place. And I remember as a child always seeing the Shoney's restaurant in Macon and always wanted to go. So here it is 20 years later, I'm out of high school, out of college, out of law school. I'm a lawyer. And I go, and I have my ceremonial hamburger at Shoney's Big Boy.

MR. SCHUCKERS: Now, why did you go to Washington, D.C., from Macon and from Atlanta in August of 1963?

JUDGE BUTLER: College. I graduated from high school in 1963, and I applied for admission to Howard University in Washington, which was the capstone of Negro education, as they called it.

MR. SCHUCKERS: Right.

JUDGE BUTLER: And that would have been at Howard. And so I went to Howard University.

MR. SCHUCKERS: Okay. What was your experience initially coming into Washington, D.C., in terms of any segregation patterns that you --

JUDGE BUTLER: Well, it was interesting. Washington was not de jure, legally segregated like the South. But Washington, much to my surprise, was as de facto segregated as any -- as Macon, Georgia. And so, you know, obviously when you rode the transit bus in D.C., you could sit in it where you want to. So you didn't have that kind of segregation or discrimination. But there were other things. Even though you could go to the train station and get off to get a taxi, there were certain cab companies that would not pick up black riders. So you didn't have the de jure segregation or discrimination; you had the de facto.

MR. SCHUCKERS: Did you run into the same sort of de facto segregation when you visited Philadelphia several years before that?

JUDGE BUTLER: Well, I was a child and really didn't -- I don't have any negative recollection. Like I said, the positive or the significant recollection I have respecting race matters was the fact of waking up on a Saturday morning and going out on the porch at my aunt's house and sitting on the porch and looking and seeing that the people that live on both sides of her were white and there were white kids and that the white kids came over to the porch where I was and started playing with me. I mean, that was, like, mind-boggling.

MR. SCHUCKERS: Sure. Now, you entered Howard University then in September, I assume.

JUDGE BUTLER: September 1963.

MR. SCHUCKERS: 1963. And could you reflect on your career there?

JUDGE BUTLER: Well, you know, Howard University was top -- well, still is the top African American university in America and one of the top universities in America. There's grad school, law school; students from all over the world. They have one of the largest --

Howard has the largest enrollment of foreign students than any other university in the country, black or white. So I got exposed to this incredible international dimension. I got exposed to an incredible national dimension because black kids came from all over the country. So that was an incredible experience seeing that many people, varied backgrounds. It was incredible, just an eye-opening experience for me.

I was on the football team. And so the football team, we travelled all over the East Coast and the South and played other colleges and universities, mostly at that time African American colleges and universities. So that was, you know, real special for me.

MR. SCHUCKERS: What did you major in, in college?

JUDGE BUTLER: Well, ultimately I majored in economics and minored in business. I started out as an allied science major. I wanted to be a scientist. But the science program at Howard was academically very, very challenging. I played on the football team. And we had practices in the fall -- I mean in the afternoon and evening, and the time overlapped. So the football and the science program at Howard didn't mix. So it became readily apparent to me that I needed to devote more time and attention to my studies or I was going to have some problems. And I opted to withdraw from the allied science program and focus instead of -- like I said, I decided on an economic major, the most mathematical of the social sciences. And I had interest in math and science, so I became an economics major, business minor.

MR. SCHUCKERS: Looking at your years at Howard as an undergraduate, does anybody jump out at you in terms of having a great impact on your life, any professors, any colleagues, any students?

JUDGE BUTLER: Oh, well, Howard University was incredible in terms of its history, legacy, professors, and the like. The assistant athletic director became a very good friend of mine at Howard. And interestingly enough, he was a third generation college grad. His granddaddy had graduated from Oberlin back in 1890, and his granddaddy had graduated from Howard Law School in 1896. And his father had graduated from Howard early on. So this guy was a part of, you know, black bourgeois, black middle class in D.C. So he was somebody that was just a real -- early on, just connected, a real good friend. I think about him. I mean, I think about other professors who were just good -- the chairman of the philosophy department is somebody that I remember that was just very helpful in terms of the academics.

MR. SCHUCKERS: And these people were inspirations for you?

JUDGE BUTLER: Yes, indeed.

MR. SCHUCKERS: Did they encourage you to go on to law school then?

JUDGE BUTLER: Well, I don't know – I can't tell you to this date when I decided to go to law school or what made me decide to go to law school. But certainly in a general kind of way, these folks would have encouraged me because they pressed me on academics. I mean, one of the things that was great about being at Howard is that there was a rigorous academic program. There were people who basically helped you focus in on the rigors and anything you needed to do to address those.

MR. SCHUCKERS: Yes. Did you go right from Howard as an undergraduate right to law school?

JUDGE BUTLER: Yes. It took me five years to get my bachelor's degree. So at the end of my fourth year, I guess that's when I was very seriously considering what I was going to do. And I was torn between, you know, pursuing a graduate's degree in economics, because I had become really intrigued, really fascinated by economics and business, or whether or not I wanted to take a more applied approach to business. I went to law school.

And again, we're talking about 1968. We fast-forward from '63, everything segregated by law to now we have the 1964 Civil Rights Act, which gave us the most famous provision, Title VII, you know, ending discrimination with employment. You've got the '64 Civil Rights Act. You've got the Housing Act that's been passed. You've got the voting rights that have been passed. Between '63 and '68, the time I graduated, there was major civil rights legislation. So – and I'm from Georgia. Things are happening. And so I'm saying, you know what -- and Howard is the university for law school, for civil rights, for Thurgood Marshall, all of that stuff. And I began to focus on law school and decided I would go to law school once I got my degree. So the following year, I got my degree, and then I enrolled in Howard Law School.

MR. SCHUCKERS: Were there any courses in law school that really attracted you?

JUDGE BUTLER: Well, you know, it was interesting -- and it's almost coincidental -- but the courses that I was most attracted to were civil procedure and federal jurisdiction. And I say that to you almost – it's – I'm just recognizing this, that I really – I was excited, hyped about civil pro, about fed jurisdiction, and it tied into certainly the fed jurisdiction, the whole civil rights piece because of the federal court litigation, that civil practice. And why I focused in – why I was so fascinated and intrigued by civil procedure, I don't know. But there comes a time where we fast-forward to my career as a lawyer, and working in the federal government, I had distinguished myself early on as a litigator for the EEOC based upon principally my knowledge, my sophistication, the ease with which I handled civil procedure, civil practice.

MR. SCHUCKERS: Were there any professors at Howard Law School who really were an inspiration to you in federal procedure or civil procedure?

JUDGE BUTLER: Well, the -- I was a grad assistant to Professor Oliver Morris who taught fed jurisdiction, evidence, and jurisprudence. But Dr. Oliver Morris really, really stands out as somebody who was special; scholar, teacher. He was a real, real, real --

MR. SCHUCKERS: Really an inspiration for you?

JUDGE BUTLER: Yes, he was. He was special. He was real special.

MR. SCHUCKERS: Now, after you graduated from law school, what direction did you go?

JUDGE BUTLER: Well, I was going to take a job at the NAACP Legal Defense Fund in New York which had an internship program in which they took recent law school grads to New York for a year, train them in civil rights law, and sent them back home to the South to establish private practice and, as part of the private practice, to handle civil rights cases. And so I decided that's what I was going to do.

But in the meantime, I was contacted by Columbia University. They had a graduate program, graduate program in law. And I was asked to apply. And I applied, of course, to the LL.M. program. So I left Howard to go to Columbia's LL.M. program. And Columbia had -- I didn't realize it at the time -- a strong affiliation with the NAACP Legal Defense Fund. Many of the law professors at Columbia would work with the NAACP on the civil rights cases and had done it over the years with Thurgood Marshall when he was Chief Counsel for the Legal Defense Fund for the NAACP. So there was a strong Columbia/NAACP Legal Defense Fund connection.

So once I got into the LL.M. program, I decided I wanted to concentrate on public law and also do some part-time stuff with the Legal Defense Fund that year. So I spent a year there. I did a lot of public law stuff, legislation, labor relations, you know, civil rights stuff.

MR. SCHUCKERS: And as I recall, the early 1970s was a period where the law was really changing in terms of equal protection --

JUDGE BUTLER: No question.

MR. SCHUCKERS: -- and interpreting the Civil Rights Act of 1964.

JUDGE BUTLER: It was magical because what you had -- and I went to the Legal Defense Fund. And after graduating and getting my LL.M., I then went and joined the staff of the Legal Defense Fund. So instead of an internship where they would train me for a year and send me back to Macon with my LL.M., I became a staff attorney.

So -- I mean, it was 1972. And we still got the residuals of Brown versus Board of Education. So your right of passage when you went to Legal Defense Fund, you were assigned not the Title VII cases dealing with employment discrimination; young lawyers were

assigned to clean up the old Brown versus Board of Education cases. And there was still a bunch of those cases around --

MR. SCHUCKERS: All around the country.

JUDGE BUTLER: Right. And then you were moving into the metropolitan school district segregation cases. Some of the major civil rights cases in the '70s, early '70s were cases involving residuals of Brown versus Board of Education, like Swann versus Charlotte-Mechlenburg in North Carolina. And then we had the metropolitan cases coming out of Detroit, out of Denver. And so there was a lot of Brown versus Board of Education type stuff, you know, coming out of 1954. But there was also this new stuff out of the '64 Civil Rights Act -- not a whole lot of public accommodation that I worked on, but the Title VII stuff just came alive. And ultimately I was assigned to work in the Employment Discrimination Section.

MR. SCHUCKERS: Now, were you living in New York at the time?

JUDGE BUTLER: Yes. I mean, I moved to New York after graduating from law school. And when I enrolled in Columbia, I moved to New York and stayed in New York for five years.

MR. SCHUCKERS: And then after that, then where did you go?

JUDGE BUTLER: After being at the Legal Defense Fund for a total of three years, I took a job with the federal government at the EEOC [Equal Employment Opportunity Commission]. And as a result of Title VII of the '64 Act, the EEOC was created and a federal agency was established to deal with employment discrimination. And in 1972, the EEOC statute was amended to give EEOC litigation responsibilities, enforcement jurisdiction -- I mean, so enforcement, so they could go into federal court and file lawsuits. Up to that point, all the EEOC could do was mediation, conciliate and try to --

MR. SCHUCKERS: It couldn't enforce.

JUDGE BUTLER: It couldn't enforce in federal courts.

MR. SCHUCKERS: Right.

JUDGE BUTLER: And so it is now '75. I have my master's. I've been at the Legal Defense Fund now three years. In '75, the EEOC is gearing up to deal with enforcement. The guy who was head of the Employment Litigation Program at the Legal Defense Fund became the new Associate General Counsel at the EEOC for litigation. So they took a guy from the Civil Rights Movement and brought him to Washington to head up the enforcement litigation.

MR. SCHUCKERS: Now, was that during the Ford administration?

JUDGE BUTLER: That would have been in -- it's certainly -- it was right after -- it was right after the Nixon -- the end of Nixon administration, beginning of Ford because the guy who was one of our earliest chairs in enforcement, William Brown, a prominent attorney at Schnader, Harrison, Segal, and Lewis in Washington and Philadelphia, Bill was the chairman, and he was appointed by Nixon as chairman. And then Bill left, and Ford obviously took over after that, after Nixon resigned. And -- yes, so it would have been the Ford -- the Nixon/Ford era.

MR. SCHUCKERS: Yes. So you stayed with the EEOC then, and you were involved in the enforcement --

JUDGE BUTLER: Right.

MR. SCHUCKERS: -- of their mandate?

JUDGE BUTLER: Right.

MR. SCHUCKERS: Did you have to travel around the country --

JUDGE BUTLER: Interestingly enough, when they set up enforcement litigation at EEOC, they divided the country into five regions. And there was a Philadelphia region, and I was assigned to the Philadelphia region. And we covered a 13-state area from Virginia, West Virginia, north. So I agreed to handle litigation. And it was ironic because we could be in Boston or Buffalo and we could also be in Richmond. And there was a significant difference between the employment discrimination that confronted them in Boston or Buffalo or New York City and what you see in rural Virginia or Richmond, Virginia, or West Virginia, whatever. So that was our 13-state region.

We had offices -- we had regional offices in Atlanta, regional offices in Chicago, regional offices in Denver, regional offices in San Francisco. And there came a time when we would, in fact, do some things outside of our 13-state region, Philadelphia region.

MR. SCHUCKERS: So how long did you stay with the EEOC?

JUDGE BUTLER: Interestingly enough, I went in 1975, and I ultimately left EEOC in 1995, 20 years later. And the agency changed. I moved from the litigation enforcement section after a number of years. In 1979, we merged the investigation, administrative, and litigation. And so I became the director of the Philadelphia office. I became an administrator, and I had an office that investigated, had an office with lawyers, had an office with administrative staff.

MR. SCHUCKERS: So you were the regional director --

JUDGE BUTLER: Right, out of Philadelphia.

MR. SCHUCKERS: -- out of Philadelphia. About how many people did you supervise there?

JUDGE BUTLER: Well, before we made the transition from litigation, with the litigation section, we must have had over about -- I guess about 50 folks. Let me see. About 40 folks. When we did the consolidation in 1979, we brought in the investigative offices and the lawyers and all that other jazz. I think at one time the staff was 150.

MR. SCHUCKERS: So you were in charge of 150 people as regional director?

JUDGE BUTLER: As regional director. We had an investigative -- so we had investigators at that time in -- we had offices in Pittsburgh, had offices in Philadelphia, had offices in North Jersey. But our litigation stuff was out of Philadelphia. And we basically -- people filed complaints with the EEOC offices or they filed with the Pennsylvania Human Relations Commission or any other State Human Relations Commission in Jersey, Delaware, Pennsylvania, West Virginia. And we did the investigation. And if we found reasonable cause for discrimination, we filed lawsuits.

MR. SCHUCKERS: Now, you stayed as regional director in Philadelphia for how long?

JUDGE BUTLER: In 19 -- interestingly enough, in 19 -- I don't recall right off the top, but there came a time when I was asked to come to Washington to be Acting Associate General Counsel. The guy that had come from the Legal Defense Fund as Associate General Counsel for enforcement litigation offices left. So they needed somebody to fill in on an interim basis for him. So I was asked to be Associate General Counsel for enforcement litigation for a short while, about a year, not quite a year.

I went back to Philadelphia as administrator of the office. And then in 1984, I was sent to Atlanta to run the Atlanta office as an executive. And then in the summer of 1984, the General Counsel resigned, and the new chairman of the agency wanted to appoint an interim GC. So I was asked to become the Acting General Counsel for six months, until after the election in November of '84.

MR. SCHUCKERS: So you had to move from Atlanta to Washington, D.C.?

JUDGE BUTLER: Right.

MR. SCHUCKERS: So, Judge, in 1984, then you moved from Atlanta to Washington, D.C., to be Acting General Counsel for the EEOC. Is that correct?

JUDGE BUTLER: Correct. And the interesting aside here is the then-chairman of the EEOC that asked me to do that was Clarence Thomas.

MR. SCHUCKERS: Is that right?

JUDGE BUTLER: Yes. Clarence Thomas, like Johnny Butler, was born and raised in Georgia, prior to the '64 Civil Rights Act.

MR. SCHUCKERS: Did you know him before?

JUDGE BUTLER: No, I did not know him until he became chairman of the EEOC. But we got to know each other. Part of that is a result of both of us being from Georgia. And like I said, I was given two national awards, one, by -- I was one of the top ten executives in the federal government under age 40. The Junior Chamber of Commerce had a special awards program. Also, the federal government had tried to come in and use the private sector model for special awards and special recognition for top executives. So I was selected as a meritorious executive, one of the top 5 percent of the federal government. So I got these two awards for management.

And so when Thomas came in as chairman, the EEOC had some management issues. So he sent me to Atlanta, which was an office that had some management issues, the office from his home state, my home state. He said, "I want you to turn this office around." Well, I go down there, and six months into that assignment, the General Counsel leaves, in an election year.

MR. SCHUCKERS: So you were sort of on the hot seat?

JUDGE BUTLER: Yes. Not sort of, but very much on the hot seat.

MR. SCHUCKERS: Right.

JUDGE BUTLER: So I came up there in June of '84, was supposed to be there for six months, until after the election. But they didn't nominate anybody for GC until September the following year, 15 months. So I served 15 months acting before they nominated somebody. They nominated a guy to be General Counsel. This guy went through three sets of confirmation hearings before he was finally voted down. So I'm still sitting there. Then they come back six months later, and they nominate somebody else. And so finally in April of '87, they get a new General Counsel. I've been there from June of '84 to April of '87 as Acting General Counsel. So at that juncture, Chairman Thomas asked me about staying in Washington as Chief of Staff of the agency. And I told him I've had enough of Washington; I was going to go back to Philadelphia, to my "career" senior executive position.

So I came back to my old office in Philadelphia in '87. And I worked in that office in '87 until -- as the director of the region until in January 1995, when Tom Ridge became Governor.

MR. SCHUCKERS: So you were regional director again then in Philadelphia?

JUDGE BUTLER: Yes.

MR. SCHUCKERS: '87 to '95?

JUDGE BUTLER: Right.

MR. SCHUCKERS: Okay. And that's an administrative position; you were in charge of a hundred, 150 people.

JUDGE BUTLER: Yes.

MR. SCHUCKERS: And Governor Ridge then approached you --

JUDGE BUTLER: About January of '95 when he became Governor -- about joining his cabinet. I became the Secretary of Labor of Industry in January '95 and stayed for the full eight years of the Ridge Administration. And then after I left, I went back to Philadelphia, and I joined, became counsel of a small law firm, a boutique litigation law firm.

MR. SCHUCKERS: This is in '03 then?

JUDGE BUTLER: Yes, 2003.

MR. SCHUCKERS: Could you reflect briefly on your eight years in the Department of Labor and Industry?

JUDGE BUTLER: One of the greatest jobs I've ever had was the Secretary of Labor and Industry. And one of the greatest bosses I've ever had was Tom Ridge. Of course, Delores Wilson, the person who brought me to Philadelphia for the EEOC, was outstanding in terms of contributing to my career. Clarence Thomas was also an outstanding boss.

Labor and Industry [L & I], as you know, is one of the largest cabinet agencies. And certainly from a public policy/law enforcement perspective, it had enormous responsibilities. And in most states, the jurisdiction of our Department of Labor and Industry is probably covered by -- is covered by -- it's covered by 3 or 4 different state agencies. And so it's a large agency, enormous responsibility. You know, we had I think 6,000 employees, 200 field offices. And if you add up all of the budgetary components, the agency probably had about \$3 billion budget. So it was just enormous. It was just massive and something of -- very much of interest to you and something you're very much familiar with.

The administrative adjudicatory apparatus at L & I is nothing short of complex -- a lot of dimensions, substantively lots of money, lots of policy stuff. But I was able to put together a team with Governor Ridge's blessing. And we had an initiative called Labor and Industry PRIDE, which we pulled together about 40 people that got together once every quarter. And we managed that agency, and we managed it exceptionally well. And as you know, the big thing is you've got the unemployment compensation activities. And there's always the question, is the trust fund solvent?

Another big component is workers' compensation. When I became Secretary, Governor Ridge identified three major issues that he thought he needed to deal with. One of

which was regulatory reform with a focus on environmental protection. Another issue was the corporate taxes, and the third was workers' comp reform.

So the Governor identifies three policy issues coming in, and one of those policy issues was mine. And as a result, a year later, we passed Act 57, reforming the workers' compensation law. So you have UC; that was a big one. You have workers' compensation; that was a big one. Obviously we have labor relations activities. And along those lines, in L & I, probably unlike any other cabinet post, everything has labor and management dimensions. Every board, every commission, every initiative that is -- and the title, Labor and Industry. So it was created -- from a political perspective and a policy perspective, that was an enormous challenge.

MR. SCHUCKERS: Because in many states, it's just the Department of Labor.

JUDGE BUTLER: Yes.

MR. SCHUCKERS: And Pennsylvania has the Department of Labor and Industry. So when you get together, you have to bring in labor and industry if you're going to come up with a new policy in unemployment compensation or workers' compensation or labor relations. Yes.

JUDGE BUTLER: Yes, and it was a real challenge. There we had -- I mean, as a part and parcel of the whole workers' comp reform, the whole workplace safety is an issue; and Bureau of Occupational and Industrial Safety.

MR. SCHUCKERS: Yes.

JUDGE BUTLER: Anything that impacts the operation of a plant or a factory is Bureau of Occupational and Industrial Safety.

We also managed all of the labor market data, which formed the basis for all economic planning for the state. The Department of Community and Economic Development relies upon our data, the Budget Secretary, etc.

MR. SCHUCKERS: I take it you enjoyed your eight years?

JUDGE BUTLER: It was incredible. I mean, remember now, I'm an economics major; remember I'm a lawyer who's been litigating. And Labor and Industry has nothing but economic issues, nothing but marketplace/workplace issues, and they're overlaid with the legal apparatus. So it was seventh heaven for me.

MR. SCHUCKERS: So in January of 2003 then, you left state government?

JUDGE BUTLER: Right.

MR. SCHUCKERS: The Ridge/Schweiker administration was replaced by the Rendell administration.

JUDGE BUTLER: Right.

MR. SCHUCKERS: And then you went to Philadelphia to practice law?

JUDGE BUTLER: Yes. And I practiced, worked with a small law firm of ten lawyers, boutique litigation law firm, and I was counsel to the firm. And they did -- they did litigation. They did some plaintiff's/personal injury work, but they also did a lot of -- representing a number of colleges and universities, doing employment work, lots of employment work, sometimes public finance stuff. So that's where I was.

MR. SCHUCKERS: How long did you stay there?

JUDGE BUTLER: I stayed there five years.

MR. SCHUCKERS: Five years. Did you enjoy that?

JUDGE BUTLER: Oh, yes, very much so.

MR. SCHUCKERS: I take it you've enjoyed every one of the positions you've had.

JUDGE BUTLER: Yes. I enjoy my work. I enjoy my work.

MR. SCHUCKERS: Yes. Great.

JUDGE BUTLER: And then one day sitting -- I got a call from Senator Pileggi, telling me that there's a vacancy on the Commonwealth Court and that there's some people who think I would be a good person to be appointed to Commonwealth Court.

MR. SCHUCKERS: This is Senator Pileggi I believe from Delaware County.

JUDGE BUTLER: Delaware County, yes.

MR. SCHUCKERS: Yes.

JUDGE BUTLER: Yes. And I've known Senator Pileggi back when he was mayor --

MR. SCHUCKERS: Mayor of Chester.

JUDGE BUTLER: Chester. And I was Secretary of Labor and Industry. And obviously in a place like Delaware County, the Secretary of Labor and Industry spends a lot of

time looking at major economic issues. So I spent a lot of time down in Chester working with development stuff, labor management stuff, trying to help him, you know, do some things.

And -- but again, at some point in 2008, I got a call saying there's a vacancy on the Court, that Judge Colins has announced he's retiring, which created a vacancy. And ultimately I was appointed to that vacancy, and that was basically 18 months. But before I finished that 18-month vacancy, Judge Doris Smith decided that she was going to retire. So there was an opportunity for another 18-month appointment, and I was given another 18-month appointment. So I have now been on the Court for -- as of June of this year, it's been three years.

MR. SCHUCKERS: So you'll be leaving in December after three and a half years with the Court?

JUDGE BUTLER: Right, three and a half years on the Court.

MR. SCHUCKERS: Could you reflect upon any aspects of the Commonwealth Court with which you've been associated which really you've taken a real great perspective on, for instance, the concurrent jurisdiction of the Court, the collegiality of the Court, the other judges of the Court?

JUDGE BUTLER: Before responding directly to that question, let me just make an observation.

When I was Secretary of Labor and Industry, even though we were probably -- probably except for the Attorney General, L & I is probably one of the most litigious of the state government agencies. I was so caught up being the executive of L & I that I did not focus on the litigious nature of L & I. I'm being the executive; I'm being the man. So when I came to Commonwealth Court, it hits me like a ton of bricks how litigious L & I was those eight years, how litigious L & I is. So that's one of the things that -- that I -- for the first time I see the litigiousness of L & I.

MR. SCHUCKERS: Yes. And parenthetically, I think something like 40 percent of the cases in the Commonwealth Court come from the Department of Labor and Industry, workers' compensation, and unemployment compensation primarily.

JUDGE BUTLER: Yes. And you've got labor relations stuff. You've got prevailing wage stuff. You've got the Bureau of Occupational and Industrial Safety. You've got wages -- not wage but compliance; all kinds of stuff.

Prior to getting on the Court itself, I did not have a full appreciation that one of the parties in Commonwealth Court has to be a governmental entity. I didn't focus in on how -- how significant that was. I think from that perspective, Commonwealth Court has as much impact on public policy as any entity of government, period, because of the fact that one of the parties to the litigation has to be a governmental entity.

Now, that brings us to the whole jurisdiction. I am absolutely fascinated, as we speak, literally, at the jurisdiction of the Commonwealth Court. Not only jurisdiction in a classic power thing, what are you responsible for, that kind of stuff, but also in terms of the procedural aspects, you know, whether it's administrative adjudication, whether it's court adjudication. But the -- the whole -- and I guess this goes back to my first year of law school, civil procedure, my development of expertise at the EEOC as a lawyer, as a manager where I'm focusing in on civil practice and procedures. So the whole practice and procedures of this Court just fascinates me.

MR. SCHUCKERS: Parenthetically, I think the only other court in the country that is like the Commonwealth Court in terms of jurisdiction is the D.C. Circuit Court.

JUDGE BUTLER: That's right.

MR. SCHUCKERS: For instance, the EEOC decisions don't go to the District Court, as I recall. They go to -- usually they go to the D.C. Circuit Court of Appeals.

JUDGE BUTLER: Well, that's partially correct. Matters involving federal government, EEO matters involving federal government employees would go on a different route. There are two courts of appeals in D.C. You've got the U.S. Court of Appeals for the D.C. Circuit, which is like the Third Circuit or the Fifth Circuit or whatever. But you've also got what is called the U.S. Court of Appeals for the Federal Circuit.

MR. SCHUCKERS: That's right.

JUDGE BUTLER: And that court is almost -- it's equivalent at the federal level to our court.

MR. SCHUCKERS: So the jurisdiction of the Commonwealth Court is very unusual. Any other aspects of the Commonwealth Court that jump out at you?

JUDGE BUTLER: Well, one of the things that is most interesting, most fascinating is that this is a court -- and about 50 percent of my time I suspect is devoted to this aspect of the Court. In this particular Court, all opinions have to be voted on by each one of the judges. That is so unique and so significant in my perspective that -- it's demanding because I suspect that half of my time is devoted to reading the circulating opinions of other judges. But that makes the quality of the adjudications in this Court second to none. And the development, if you will, of the jurisprudence of this Court has got to be just so special as a result of that requirement, the circulation of opinions and the votes by all of the judges on the Court. I mean, that's -- that's so very, very, very special.

Now, on the other side of the coin, I am intrigued by the notions of standard of review and scope of review. And I've read a lot of stuff about this since I've been on the Court. And it's interesting that it appears that they are two discrete concepts; but by the same token, there has been a merger or an amalgamation, if you will, of these two concepts. Conflation would be the best word, where they have kind of merged. So you've got three concepts. You've

got the classic notion of standard of review, classic notion of scope of review, and then you've got a hybrid notion of standard of review, scope of review.

MR. SCHUCKERS: Which has led to a lot of confusion.

JUDGE BUTLER: Indeed. And I would love to be able to write something about that, but I would be reluctant, though, because I've seen the Supreme Court justices cite opinions where they use it interchangeably. I've seen our judges on this Court and I've seen Superior Court judges do the same thing. So the judges seem to be comfortable with the merger of the two concepts.

But that's something that intrigued me. And in that regard, one of the most special persons I have known, come to know the last three years on this Court is Kristen Brown, our Prothonotary. She -- you might know a little something about Kristen Brown.

MR. SCHUCKERS: A little bit.

JUDGE BUTLER: But she is a special human being. And we have had some intellectual discussions about the jurisprudence.

MR. SCHUCKERS: She's an expert on jurisdiction.

JUDGE BUTLER: Yes, she is.

MR. SCHUCKERS: She just loves that. And also scope and standard of review.

JUDGE BUTLER: Yes. And the book.

MR. SCHUCKERS: She loves that.

JUDGE BUTLER: The book. The book. And John Moyer said, "Kris Brown is the book."

MR. SCHUCKERS: That's right.

JUDGE BUTLER: But that's fascinating.

MR. SCHUCKERS: Any other reflections on Commonwealth Court?

JUDGE BUTLER: Well, you know, one of the people that I've interacted with probably more so -- with more frequency than anybody else is our P.J., our President Judge, Bonnie Leadbetter. I admire Bonnie's management of the Court, her skills as a lawyer, as a judge. She's special.

The collegiality. We've got a bunch of judges here that work hard as judges and basically get along with each other too.

MR. SCHUCKERS: Yes, I think every judge who has been on the Commonwealth Court has noted that.

JUDGE BUTLER: Yes.

MR. SCHUCKERS: And I think in terms of President Judge Leadbetter, I think my only regret in leaving the Commonwealth Court is I'd no longer be working with her because it was always a pleasure working with her.

JUDGE BUTLER: Yes, she's special. She's really special. You know, keep the docket moving, keep cases adjudicated.

And again, just the scope, if you will, of our jurisprudence, not -- not in a jurisdictional thing but intellectual, pure intellectual case, that stands out. And we've got some giants. We've got some intellectual giants on this Court; I mean, just real, real giants.

MR. SCHUCKERS: Yes. Well, Judge Butler, thank you very much. I really appreciate your time. Good luck in the future.

Do you have any idea what you're going to be doing after December?

JUDGE BUTLER: I have no idea. People say, "Aren't you being coy?" I say, "No, I'm not; I'm not being coy."

MR. SCHUCKERS: Well, I can tell you I've talked to a lot of staff members and a lot of judges on the Commonwealth Court, and you are going to be sorely missed. And I'm very serious about that. You've made a wonderful contribution to the Commonwealth Court in the last three-plus years.

Thank you very much.

JUDGE BUTLER: Thank you, sir.

MR. SCHUCKERS: Really enjoyed it.

(Whereupon, the interview concluded.)